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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Texas Service Center Date: AUG 10 2000

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Other Worker Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was denied by the director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a poultry processing plant which seeks to employ the beneficiary permanently in the United States as a poultry dresser at an annual salary of $13,520. As required by statute, the petition was accompanied by an individual labor certification from the Department of Labor. The labor certification was issued to [redacted] not to the petitioner. The director determined the petitioner had not established the ability of [redacted] to pay the beneficiary's proffered wage as of the petition's filing date, March 15, 1990. The director also determined that the petitioner had not provided evidence that it is a successor-in-interest to [redacted]

On appeal, counsel for the petitioner provides a brief.

Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled or unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States. This section also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

8 C.F.R. 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Eligibility in this matter hinges on the petitioner's ability to pay the wage offered as of the petition's filing date, which is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. Matter of Wing's Tea House, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's filing date is March 15, 1990. The beneficiary's salary as stated on the labor certification is $6.50 per hour which equates to $13,520 annually.

With the original petition, the petitioner submitted a copy of two articles dated January, 1996 and January, 1997 and a letter from [redacted] director of Personnel at [redacted] stating that [redacted] acquired [redacted] in 1982. The director of Personnel also provided copies of financial statements for the period 1986 through 1993 and stated that the corporation has "always operated at a profit and each statement shows retained earning and net profits over $3 million dollars per year. This proves that the corporation, which employs over 3 thousand people in the United States, can afford to pay the above beneficiaries a yearly salary of approximately $13,000 each."

The director concluded that there was not sufficient documentation to demonstrate the ability to pay the wage offered. On June 23, 1999, the director requested additional evidence of the petitioner's ability to pay the proffered wage at the time of filing of the petition and to submit evidence that clearly demonstrates the ownership of [redacted] by the petitioner.

In response, counsel for the petitioner submitted the same evidence as previously submitted.

On appeal, counsel argues:

> . . . Included are letters from [redacted] executives and financial officers certifying the ability to pay the proffered wages, and the [redacted] purchase of [redacted] and its subsidiaries, including [redacted]
>
> In this matter, there is no dispute that [redacted] employs over 20,500 persons and has sales in excess of 2.5 Billion dollars annually. There is also no dispute that Mr [redacted] is a financial officer of [redacted] and thus, can certify, as he has in the attached letters, that [redacted] purchased [redacted] and its subsidiaries including [redacted] and that [redacted] the [redacted] largest poultry producer in the United States can pay the proffered wages. . . .
>
> Under 8 C.F.R. § 204.5(b)(2), in the case of a prospective United States Employer who employs more than 100 employees, the District Director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. . . .

The regulations at 8 C.F.R. 204.5(g)(2) state, in pertinent part, that in a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the

prospective employer's ability to pay the proffered wage. In this case, the petitioner has submitted a letter asserting that it has more than 100 employees and that it is financially viable. In addition, the magazine article date [redacted] quotes, on page [redacted] as [redacted] surge in production came mainly on the strength of its acquisitions of [redacted] early in [redacted] and [redacted] plant in [redacted] . . [redacted] employs 20,800 people . . ."

The record does not contain any derogatory evidence which would persuade the Service to doubt the credibility of the information contained in the letter from the financial officer or the supporting documentation. Therefore, the petitioner has demonstrated its financial ability to pay the beneficiary's salary as of the petition's filing date. The petitioner has further demonstrated that it is the successor-in-interest to the corporation which obtained the labor certification.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has met that burden.

ORDER: The appeal is sustained.